

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

LAWRENCE SANBORN MORELOCK,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:22-cv-00343 (RDA/IDD)
)	
JEFFREY KATZ, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

This matter comes before the Court upon the Report and Recommendation (“Recommendation”) issued by Magistrate Judge Ivan Davis on April 6, 2022. Dkt. 6. In this Veterans Affairs case, Judge Davis recommends that the Court deny *pro se* Plaintiff Lawrence Sanborn Morelock’s (“Plaintiff”) Motion for Leave to Proceed *In Forma Pauperis*. Pursuant to Federal Rule of Civil Procedure 72(b)(2), the deadline for submitting objections to Judge Davis’ Recommendation was April 20, 2022. On April 15, 2022, Plaintiff filed an amended application to proceed *in forma pauperis*. Dkt. 8. Attached to that filing, Plaintiff included an objection to Judge Davis’s Recommendation. Dkt. 8-1.

This Court retains discretion to grant or deny an *in forma pauperis* petition. *Dillard v. Liberty Loan Corp.*, 626 F.2d 363, 364 (4th Cir. 1980). A court must assess “the poverty and good faith of the applicant and the meritorious character of the cause in which the relief was asked.” *Kinney v. Plymouth Rock Squab Co.*, 236 U.S. 43, 46 (1915). “In the absence of some evident improper motive, the applicant’s good faith is established by the presentation of any issue that is not plainly frivolous.” *Ellis v. United States*, 356 U.S. 674, 674 (1958).

In Plaintiff's objection, Plaintiff identifies that of his \$759.00 in discretionary income, he must pay total monthly "basic living expenses" of \$777.00. Dkt. 8-1 at 8. In his breakdown of these expenses, Plaintiff identifies his Rent as \$311.00, his Utilities as \$72.00, his Internet and Cable as \$94.00, and his Food, Clothing, and Medications as \$300.00. *Id.* On May 9, 2022, Plaintiff filed another amended application to proceed *in forma pauperis*. In that latest petition, Plaintiff confirms his monthly income as \$1,416.00 in retirement and disability, \$20.00 in public-assistance, and \$1.42 from employment. Dkt. 11 at 3. He also states his total monthly expenses as \$657.00. That leaves Plaintiff with roughly \$780.42 in monthly discretionary income after paying for necessities.

With nearly \$800.00 in monthly discretionary income, Plaintiff has not demonstrated that he is unable to save sufficient funds to pay the filing fee which is approximately half that amount. This Court adopts the position taken by prior courts in this circuit and others in finding that when a party's monthly income exceeds monthly expenses by "a few hundred dollars," that party has not met the extreme poverty standard demanded in granting a petition to proceed *in forma pauperis*. See *Manzaneda v. Duenas*, No. 1:18-cv-40, 2018 WL 10149410, at *1 n.1 (E.D. Va. Jan. 18, 2018) (citing *Brewer v. City of Overland Park Police Dep't*, 24 F. App'x 977, 979 (10th Cir. 2002)). While there is no evidence that Plaintiff sought to act in bad faith or has attempted to abuse the right to litigate before this Court, based on Plaintiff's numerous filings, it appears that his monthly discretionary income is enough to pay for the filing fee of a civil complaint. Indeed, Plaintiff has already paid at least \$211 since initiating this action. See Dkt. 8-1 at 8.

After reviewing the record and Judge Davis' Recommendation, the Court hereby APPROVES and ADOPTS the Recommendation. Dkt. 6. Accordingly, Plaintiffs' Motions (Dkt. Nos. 4; 8; 11) are DENIED; and it is

FURTHER ORDERED that Plaintiff either pay the filing fee within 30 days of this Order or have this case dismissed without prejudice; and it is


FURTHER ORDERED that Plaintiff's Second Amended Complaint (Dkt. 10) be STRICKEN from the docket as Plaintiff has not obtained leave to file a second amended complaint as he must in accordance with Federal Rule of Civil Procedure 15(a); and it is

FURTHER ORDERED that Plaintiff comply with Federal Rule of Civil Procedure 4 in properly serving his First Amended Complaint, the operative complaint in this matter, upon Defendants (Dkt. 7).

The Clerk is directed to mail a copy of this Order to Plaintiff at the address on file.

It is SO ORDERED.

Alexandria, Virginia
May 11, 2022

/s/ 

Rossie D. Alston, Jr.
United States District Judge